

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

**KAREN L. NEWLANDER,**

**Plaintiff,**

**v.**

**DONALD C. WINTER, Secretary of  
the Navy,**

**Defendant.**

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**8:06CV701**

**MEMORANDUM AND ORDER**

This matter is before the court on plaintiff's Motion to Proceed In Forma Pauperis (IFP) (Filing No. 2). Upon review of the plaintiff's papers, I shall grant the plaintiff leave to proceed IFP.

**Admonitions**

The plaintiff is informed that the court can later enter an order taxing costs in this case. No one, including the plaintiff, is relieved by this order from the obligation to pay or to reimburse taxable costs after this action is over. In addition, even after a motion to proceed IFP has been granted, the court may still revoke IFP status and dismiss a complaint under 28 U.S.C. § 1915(e)(2)(B) if the court finds that the complaint is frivolous or malicious. Kane v. Lancaster Co. Dep't of Corrections, 960 F. Supp. 219, 222 (D. Neb. 1997) (To determine that a claim is frivolous, the court must find that the claim is based on an indisputably meritless legal theory or that factual contentions are clearly baseless).

**Initial Review**

The complaint is now subject to initial review pursuant to 28 U.S.C. § 1915(e)(2)(B)(i). When presented with an IFP complaint filed by a nonprisoner, the court is "limited, in terms of sua sponte initial review, to deciding whether the plaintiff's complaint is frivolous or malicious." Id. Construed liberally, I do not find that the complaint is frivolous or malicious. See Bracken v. Dormire, 247 F.3d 699, 702-03 (8th Cir. 2001) ("it is our longstanding practice to construe pro se pleadings liberally").

**Summons Forms**

It is now time for service of process on the defendants. Fed. R. Civ. P. 4 requires service of the complaint upon each defendant within 120 days of filing the complaint. Rule 4 provides that if service of the summons and complaint is not made within 120 days after filing of the complaint, the court shall dismiss the action or direct that service be effected.

THEREFORE, IT IS ORDERED:

1. That filing no. 2 the plaintiff's motion to proceed in forma pauperis, is granted, subject to the admonitions stated above in this Order.
2. The plaintiff shall review the "Notice regarding Federal Rule of Civil Procedure 4(l)" which is set forth on page 3 of this Order.
3. The Clerk of Court shall provide the plaintiff with the appropriate number of summons forms for service of process on the United States of America and a copy of this order; because the plaintiff is proceeding IFP, the U.S. Marshal will serve the defendant on the plaintiff's behalf;
4. That the plaintiff shall, as soon as possible complete the forms and return them to the Clerk of Court; in the absence of the completed forms, service of process cannot occur;
5. That, upon receipt of the completed summons and Form-285, the Clerk shall sign the summons and forward it, together with a copy of the complaint, to the U.S. Marshal for service on the defendant; the Marshal shall serve the summons and complaint without payment of costs or fees; service may be by certified mail pursuant to Fed. R. Civ. P. 4 and Nebraska law, in the discretion of the Marshal;
6. That failure to obtain service on a defendant within 120 days from the filing of the complaint, as provided by Fed. R. Civ. P. 4(m), may result in dismissal of this matter without further notice; the Clerk shall bring this matter to the attention of the court if no defendant has been served by expiration of the 120-day deadline;
7. That after an appearance has been filed by the defendant, the plaintiff shall serve on the defendant or, if an appearance has been entered by counsel, upon such counsel, a copy of every future document submitted to the court; parties usually serve copies of documents on other parties by first class mail; the plaintiff shall include with each document submitted to the court a "Certificate of Service" stating the date a true and correct copy of such document was mailed to each defendant or the attorney of a represented defendant; to send communications to the court without serving a copy on the other parties to the case violates the rules of court;
8. That a defendant has twenty (20) days after receipt of a summons to answer or otherwise respond to a complaint;
9. That the plaintiff shall keep the court informed of her current address at all times while the case is pending; failure to do so may result in dismissal; and

10. That the parties are bound by the Federal Rules of Civil Procedure and by the Local Rules of court in the prosecution of this case; the federal rules are available at any law library, and the local rules are available from the Clerk of Court at minimal cost, and also on the court's web site at [www.ned.uscourts.gov](http://www.ned.uscourts.gov).

DATED this 21st day of February, 2007.

BY THE COURT:

s/ F.A. Gossett  
United States Magistrate Judge

## Notice regarding Federal Rule of Civil Procedure 4(l)

Federal Rule of Civil Procedure 4(l) regarding “[s]erving the United States, Its Agencies, Corporations, Officers, or Employees,” states:

(1) Service upon the United States shall be effected

(A) by delivering a copy of the summons and of the complaint to the **United States attorney for the district in which the action is brought** or to an assistant United States attorney or clerical employee designated by the United States attorney in a writing filed with the clerk of the court or by sending a copy of the summons and of the complaint by registered or certified mail addressed to the civil process clerk at the office of the United States attorney and

(B) by also sending a copy of the summons and of the complaint by registered or certified mail to the **Attorney General of the United States** at Washington, District of Columbia, and

(C) in any action attacking the validity of an order of an officer or agency of the United States not made a party, by also sending a copy of the summons and of the complaint by registered or certified mail to **the officer or agency**.

(2) (A) Service on an agency or corporation of the United States, or an officer or employee of the United States sued only in an official capacity, is effected by serving the United States in the manner prescribed by Rule 4(i)(1) and by also sending a copy of the summons and complaint by registered or certified mail to the officer, employee, agency, or corporation.

(B) Service on an officer or employee of the United States sued in an individual capacity for acts or omissions occurring in connection with the performance of duties on behalf of the United States--whether or not the officer or employee is sued also in an official capacity--is effected by serving the United States in the manner prescribed by Rule 4(i)(1) and by serving the officer or employee in the manner prescribed by Rule 4 (e), (f), or (g).

(3) The court shall allow a reasonable time to serve process under Rule 4(i) for the purpose of curing the failure to serve:

(A) all persons required to be served in an action governed by Rule 4(i)(2)(A), if the plaintiff has served either the United States attorney or the Attorney General of the United States, or

(B) the United States in an action governed by Rule 4(i)(2)(B), if the plaintiff has served an officer or employee of the United States sued in an individual capacity.